LIBRARY
SUPREME COURT U.S.

FILED
MAY 31 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1819

M. A. CRAMER, M. G. MURPHY,
LARRY C. MOYER, JOHN B. PURCELL,
WILLIAM J. RHOADES AND
ROY B. SCHERER,

Petitioners,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

RICHARD E. CROUCH
AMERICAN CIVIL LIBERTIES UNION
OF VIRGINIA
2304 Wilson Boulevard, #212
Arlington, Virginia 22201

MELVIN L. WULF
AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, N.Y. 10016

Counsel for Petitioners

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 1

OPINION BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 2

1. Is the First Amendment violated when a state court revokes the marriage-performing authority of a sect's ministers on the ground that the sect has not complied with the statutory requirement that ministers be "ordained" as "leaders"? 2

2. Is such a statutory requirement rendered constitutional by an alternative provision for religious societies having no ministers, requiring that they elect one member to serve as official liaison with the state? 2

3. Has Virginia violated the fundamental First Amendment principle that courts have no business passing on the validity of religious organizations' beliefs and doctrinally-defined religious terms? 2

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 14

APPENDIX 1

TABLE OF AUTHORITIES

Cases:

Ballard, United States v., 322 U.S. 78 (1944) 11

Barrows v. Jackson, 346 U.S. 249 (1953) 9

Page

Dickinson v. United States, 346 U.S. 389 (1953) 11

Engel v. Vitale, 370 U.S. 389 (1953) 12

Evans v. Abney, 391 U.S. 435 (1970) 9

Presbyterian Church v. Mary Elizabeth Blue Hull Church, 393 U.S. 440 (1969) 7, 9

Reynolds v. United States, 98 U.S. 145 (1879) 11

Shelley v. Kraemer, 334 U.S. 1 (1948) 9

Theriault v. Carlson, 339 F. Supp. 375 (1972) 11

Williams v. Rhodes, 393 U.S. 23 (1968) 12

Statutes:

First Amendment . . . . . *passim*

Virginia Code Annotated,
§§20-23, 20-26 . . . . . *passim*
§32-353.34 . . . . . 3-4, 6, 7

Other Authorities:

Tyler, Alice F.; Freedom's Ferment (1944) 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No.

M. A. CRAMER, M. G. MURPHY,
LARRY C. MOYER, JOHN B. PURCELL,
WILLIAM J. RHOADES AND
ROY B. SCHERER,

Petitioners,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The above-named Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia entered in this proceeding on March 5, 1974.

OPINION BELOW

The opinion of the Virginia Supreme Court is reported at 202 S.E.2d 911. The opinion is appended hereto.

JURISDICTION

The judgment of the Virginia Supreme Court affirming the judgment of the trial court was entered on March 5, 1974, and this petition was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3). The First Amendment arguments of the petitioner were all raised in the state trial court and on appeal, and there exists no valid independent nonfederal ground to support state affirmance.

QUESTIONS PRESENTED

1. Is the First Amendment violated when a state court revokes the marriage-performing authority of a sect's ministers on the ground that the sect has not complied with the statutory requirement that ministers be "ordained" as "leaders"?

2. Is such a statutory requirement rendered constitutional by an alternative provision for religious societies having no ministers, requiring that they elect one member to "officiate" as official liaison with the state?

3. Has Virginia violated the fundamental First Amendment principle that courts have no business passing on the validity of religious organizations' beliefs and doctrinally-defined religious terms?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution; Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Virginia Code, Section 20-23:

> "When a minister of any religious denomination shall produce before the circuit court . . . proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member . . . such court . . . may make an order authorizing such minister to celebrate the rites of matrimony in this State. . . ."

Virginia Code, Section 20-26:

> "Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society. One person chosen by the society shall be responsible for completing the certification of marriage in the same manner as a minister or other person authorized to perform marriages; such person chosen by the society for this purpose shall be required to execute a bond under the provisions of §20-23."

Virginia Code Section 32-353.34:

* * *

> (c) Every person who officiates at a marriage ceremony shall certify to the facts of marriage and file the record in duplicate with the officer who issued the marriage license within five days after the ceremony. In the event said officiant dies, or becomes incapacitated before completing the

certificate of marriage, the issuing clerk, upon proof to the court that a marriage was performed, may complete the certificate of marriage, when so ordered by the court."

STATEMENT OF THE CASE

Appellants Cramer, Murphy, Moyer, Purcell, Rhoades and Scherer appealed from a final judgment of the Hustings Court of the City of Richmond, Part One, entered January 5, 1973, which rescinded their authority, previously granted by the Hustings Court for the City of Richmond, to celebrate the rites of matrimony in the Commonwealth of Virginia. The judgment followed a show-cause hearing had on January 4 and 5, 1973, in which the appellants, ministers of the Universal Life Church, Inc., (hereinafter abbreviated ULC) introduced evidence that they were and are duly ordained ministers of their religious denomination and that they were in regular communion with their religious denomination and/or congregation. The Virginia Supreme Court affirmed the judgment in its opinion of March 5, 1974, to which this petition, filed June 3, 1974, is timely addressed.

Appellants Cramer, Murphy, Moyer, Purcell, Rhoades and Scherer are and have been for varying lengths of time prior to the trial in this matter ordained ministers of the Universal Life Church, Inc., (see State Record pages 95, 132, 153, 202-203—hereafter State Record references are "R" followed by page number) which organization was incorporated in Modesto, California, on May 2, 1962 (R 6, 11,) and is currently an existing and valid corporation.

Each petitioner was bonded and licensed to perform marriages by the Hustings Court for the City of Richmond, Part One, after appearing at that Court,

producing his "credentials of ministry card (exhibit #2, R 10) issued by Universal Life Church, Inc., and meeting the bond requirements. (R 97, 132, 153, 202-203) None was required to submit "proof of regular communion with the religious society of which he is a reputed member"; indeed there is no statutory definition of regular communion.

The show-cause proceedings in this case appear to have been initiated as a consequence of the application for bond and license to perform marriages by a Richmond Newspapers reporter, one Mary Lacy. After denial by the Hustings Court of Ms. Lacy's application, the Court proceeded to issue show cause orders to all Universal Life Church, Inc., ministers bonded by the Hustings Court for the City of Richmond, Part One. (R 229-232, 236-239) The show-cause hearings were consolidated for trial January 4, 1973, at which time the appellants herein appeared by counsel to contest the proposed revocations of their bonds and licenses on the several grounds that:

1) The revocation of their bonds pursuant to the court's interpretation of Virginia Code Section 20-23 was unconstitutional in that it denied them rights guaranteed by the Virginia and United States Constitution to freedom of exercise of their religion, freedom from establishment of State-authorized religions, and the right as citizens to equal protection of the law, and,

2) They complied with all the statutory requirements to be bonded if those requirements be so read and interpreted as not to pose unconstitutional religious tests, so that revocation under their circumstances and the uncontroverted facts offered in the show-cause proceedings was either an unconstitutional foray by the trial court into an area protected by the Virginia and Federal Constitutions, or an arbitrary and capricious abuse of the trial court's statutory discretion, or both.

The Virginia Supreme Court opinion decided in favor of the Universal Life Ministers the issue of whether a part-time minister could be a Sec. 20-23 "ordained minister", but it held that religious freedom was not the issue and (contradictorily) that the state's strong interest in overseeing marriages justifies the restriction of marrying authority to certain state-defined ministers (Sec. 20-23) and "certifiers" (Sec. 20-26). The court implied that "performing" or celebrating or solemnizing a marriage, or "officiating" (Sec. 32-353.34) thereat, is something beyond what a court clerk does when he issues a marriage license, but it did not say what – if anything at all – that additional act entails. It said that the beliefs of the ULC "are no concern of ours", and conceded ULC's First Amendment right to call itself a church. However, it ruled that such "casually" elevated ministers are not Sec. 20-23 lawful ministers, and that because ULC could conform to the Sec. 20-26 alternative organization format for ministerless churches, it suffered no First Amendment loss. It held that Virginia's strong interest – enforced by Section 32-353.34 – in having post-license solemnization reported ("certified") by someone officially in authority justified the state's forcing the church to adopt Sec. 20-26 structure or forgo marriages.

REASONS FOR GRANTING THE WRIT

THE VIRGINIA SUPREME COURT'S DECISION AFFIRMING REVOCATION OF ALL UNIVERSAL LIFE MINISTERS' MARRIAGE-PERFORMING AUTHORITY, AND UPHOLDING THE STATE STATUTES THAT CONDITION A CHURCH'S RIGHT TO SOLEMNIZE MARRIAGES ON ITS APPOINTMENT OR ELECTION OF ONE OFFICIAL "CERTIFIER" PER "SOCIETY" REPRESENTS A DANGEROUS INROAD ON BOTH RELIGIOUS FREEDOM CLAUSES OF THE FIRST AMENDMENT, WITH POTENTIALLY DISASTROUS IMPLICATIONS FOR RELIGIOUS FREEDOM IN AN ERA OF WIDE-RANGING HETERODOXY. IT UNCONSTITUTIONALLY REQUIRES THE CHURCH TO DEMOTE ALL ITS MINISTERS BUT ONE TO "COMMUNICANTS" AND ADOPT THE LEADER-FOLLOWER FORM OR HAVE NO MINISTERS AND ONE ELECTED "OFFICIAL CERTIFIER".

This case really presents a single, narrow issue; the extent to which a state can prescribe what is a valid form of "religious organization" for the purpose of authorizing ministers of a sect to solemnize marriages. The Virginia statutory scheme (Code Sections 20-23 and 20-26 and 32-353.34) is liberal in making that definition, but has nevertheless ignored one vital First Amendment principle – the inability of the courts even to get into disputes over the meaning of subjectively-defined religious terms. This principle was most recently cited in *Presbyterian Church v. Mary Elizabeth Blue Hull Church*, 393 U.S. 440.

Section 20-23 sets up a religious test for marrying authority, and the Virginia Supreme Court's theory is that the addition of Section 20-26, providing for Quakers and other sects without ministers, saves its constitutionality. It does not. By requiring every church that would solemnize marriages to elect or appoint someone to act as intermediary with the state, it fails to allow free exercise to those democratic religious sects whose members are, as a matter of belief, opposed to such distinctions.

Recent years have seen a vast upsurge in attacks on old conceptions in religion, all-pervasive relativism, new concepts in religious freedom, new religious doctrines, tolerant ministeries of the traditional Christian churches, and a great deal of new thinking about religion. The multiplicity of sects that America has always been known for (see Alice Felt Tyler, "Freedom's Ferment") has been greatly increased in the last decade by the enthusiastic espousal of cults that have been regarded since the 1920's as lunatic fringe beliefs.

The new preoccupations with honesty, naturalness and informality, and the multiplication of sects that themselves redefine religion, have strained the traditional preconceptions of religion to the uttermost limits. The natural reaction of state governments to this has threatened one of the most vital doctrines this Court has ever enunciated: that a court, being an agency of government, cannot decide religious questions, for as soon as a court does, it necessarily begins defining what is sincerity and orthodoxy. This is a new context for this principle but it is vitally necessary that it be reexamined by the Court in this new context. It must be forcefully restated that courts, even in cases where it might seem obvious to a layman, cannot decide what is a true and what a false religious doctrine.

Indeed any Court action to determine the rights of parties before that Court which turns upon questions

of doctrine or which imposes any religious test is impermissible state action; see *Shelley v. Kraemer*, 334 U.S. 1 (1948), *Barrows v. Jackson*, 346 U.S. 249 (1953), *Evans v. Abney*, 396 U.S. 435 (1970) and *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) in which the Court, per Brennan, J., held that a Georgia court's action in resolving a property dispute turning on questions of religious doctine overstepped the bounds of the First Amendment.

The Virginia Supreme Court opinion represents a grave inroad on this principle, and the gravest aspect of this error is that the Virginia Court has not even recognized the problem.

The Universal Life Church said that "ordination" means one thing and the Virginia Supreme Court said it means another. This is a religious question (see slip opinion page 7). Ordination is necessarily something that belief defines (see slip opinion pages 8, 9).

The Constitutional mandate is clear; the State may not promulgate or enforce any religious test whatever, particularly not to discriminate between competing sects or to deny one sect rights or privileges accorded another. The very terms of Section 20-23 of the Virginia Code require that a minister submit to a religious test upon application for a license and bond from a court. He must, under the terms of the statute, show proof of ordination (a religious function, neither defined by the statute nor performed by the State) and that he is in "regular communion with the religious society of which he is a reputed member" – requiring without specificity some nature of communication with a religious group which the court has total discretion whether or not to recognize. By the Virginia court's rule, if the Universal Life Church is to have any ministers at all, it must demote all but a few of its ministers to mere followers and elevate "leaders."

The opinion says that "the minister referred to [by Section 20-23] is the head of a religious congregation, society or order. He is set apart as a leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the [religious] order." The court then explains that Section 20-26 provides for marriages between members of societies having no ordained minister by requiring that "one person chosen by the society" shall be responsible for completing marriage certificates and dealing with the state in the same way as a Section 20-23 "minister" does. The court fails to recognize that this in itself may conflict with a democratic sect's religious beliefs and that if a sect says it does the State cannot dispute it. The state may argue that there is no sect so believing, and perhaps may say that it has checked the encyclopedia of religions to make sure, but next week a new church may be started that so believes.

The line between a "true religion" and a pseudo-religion or a jest is, within the confines of logic itself, certainly difficult to draw. Given the confines of the First Amendment, it is impossible to draw. Every false religion is probably believed by some one. The religion an original founder conceives as a jest, or a satire, or perhaps a half-hearted exercise, can become a reality that followers believe in; or – so unfathomable are the well-springs of human motivation – the clown himself may have a change of heart. The legendary Christian Saint Genesius would be a prime example. Like Theriault of the Church of the New Song, (*infra*.), he may find that a consciously designed pseudo-religion has incorporated so many of the designer's original actual beliefs that a realization dawns that he has designed the ideal cult and should be converted to it. The answer is not that the believer is lying, or that he is not lying, about his sincere beliefs, but that under the First Amendment none can say him nay.

In *U.S. v. Ballard*, 322 U.S. 78 (1944) the United States Supreme Court held, per Douglas, J., that the question of doctrinal belief of defendant Ballard, a member of the IAM movement, whose members claimed the power to communicate with Jesus, George Washington, and others, was barred by the First Amendment from submission to a jury even where the defendant was indicted for mail fraud in attempting to further that belief. Truth of the religious belief, like sincerity in embracing it, is foreclosed even where the practitioners are charged with a fradulent intrigue.

In the case most directly in point previously litigated, involving prison officials' refusal to recognize and grant privileges to inmates' variant of the Universal Life Church, Inc., *Theriault v. Carlson*, 339 F. Supp. 375 (1972), it was held that the prison officials had acted unconstitutionally. Absent a sufficiently compelling state interest, Judge Edenfield held, the State could impose no recognition standards which operated to deny one religion rights or privileges accorded another.

The Virginia Court apparently felt that it was avoiding this question. Its opinion kept the holding very narrow: that the state can regulate religions to the minimal extent of requiring (or that there is no establishment or infringement whatever in requiring) a religious body to have a hierarchy of appointed leaders (or elected leaders for those to whom the practice of appointing leaders is morally unacceptable) for the sole purpose of dealing with the state. This discriminates against those to whom even this is "against one's religion," and thus it is a violation of the Establishment and Free Exercise Clauses.* Within the First Amendment context, it

*The right of the Government to deny ministerial draft exemptions to part-time ministers of the Jehovah's Witnesses sect, *Dickinson v. United States*, 346 U.S. 389 (1953); or polygamy to Mormons, *Reynolds v. United States*, 98 U.S. 145, 164 (1879); obviously involves a far more compelling state interest. With marriage-performance there is really no state interest involved, as both the regulation and the recordation of marriages is handled civilly by the licensing court clerks.

matters not whether there are such sects, but is relevant only that there can be.

As a matter of fact, the Universal Life Church is such a sect. It does not want to be divided into classes of leaders and followers. It does not want its ministers to be Section 20-23 "leaders" and it does not want to be a ministerless church under Section 20-26 like the Quakers and even if it had to be so, would still not want to elect a "certifier". "Every man can minister" is an article of faith with ULC. Its members believe that true equality can never be achieved in a Quaker-like society where natural leaders emerge, but can only obtain where everyone is eligible to ordain himself.

America has long had Christian sects that, perhaps because of their beliefs about the communal living of first-century Christians or their roots in European anti-clericism, have had important elements of democracy and egalitarianism as religious beliefs. The Universal Life Church is not a Christian sect, but is obvious that if the Church is what it says it is, the practice of electing an intermediary to deal with the state is similarly against its religious beliefs. The crucial point is that the courts cannot officially say whether or not the Universal Life Church does mean what it ways.

If any free exercise of religion is hampered thereby—and certainly performance of the rites of matrimony is a protected free exercise—a state may not enforce any religious test as a prerequisite to licensing ministers to perform that exercise. As this Court said in *Engel v. Vitale*, 370 U.S. 421, 429 (1962), "One of the purposes of the First Amendment was to prohibit the imposition by Government of any standard or prerequisite to the free exercise of religion." See also *Williams v. Rhodes*, 393 U.S. 23 (1968), holding the state to a strict standard of compelling state interest to justify unequal treatment of groups seeking to exercise rights protected by the First Amendment.

In requiring the stratification of the UL Church, the Virginia court did not decree the maximum or minimum size of the units of the church must divide itself into for 20-23 or 20-26 purposes, but logically it would have to be larger than the existing ULC parishes (called "churches") of "sometimes as few as 3, 4 or 5" (opinion p. 3). This is heavy government interference.

It must be realized that the Virginia Supreme Court's decision also constitutes a discrimination against and a limitation on the free religious exercise of a class of willing "Universal Life followers," who do not desire to be ministers but do consume ministers' services. Because of the vast change that ideas about weddings have recently undergone, a very large class of couples exist who desire to be married by friends, and who loathe the idea of going to a traditionally autocratic "duly constituted authority" to perform this very personal and subjectively-defined act of ritual. The Virginia Supreme Court completely ignored the First Amendment Rights of those who desire to have their marriages performed by Universal Life ministers. The implications of its decision threaten the rights of such persons everywhere and the long-abiding principles of court neutrality in religion.

CONCLUSION

Certiorari should issue and the judgment be reversed as repugnant to the First Amendement.

Respectfully submitted,

RICHARD E. CROUCH
AMERICAN CIVIL LIBERTIES
UNION OF VIRGINIA
2304 Wilson Boulevard, #212
Arlington, Virginia 22201

MELVIN L. WULF
AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, N.Y.

Counsel for Petitioners

APPENDIX A

Opinion of the Virginia Supreme Court

Before SNEAD, C. J., and I'ANSON, CARRICO, HARRISON, COCHRAN, HARMAN and POFF, JJ.

PER CURIAM.

Following service on them of a show cause order, and a hearing thereon, the court below rescinded the authority of appellants, M. A. Cramer, M. G. Murphy, Larry C. Moyer, John B. Purcell, William J. Rhoades and Roy B. Scherer to celebrate the rites of matrimony in Virginia.[1] Appellants appeal this final judgment and petition that we reverse the action of the lower court, declare Code § 20-23 to be null and void, and hold that "any minister providing documentary substantiation of ordination from any organization purporting to be a religious organization be empowered and entitled to celebrate marriages in the Commonwealth of Virginia . . . .".

Appellants are all "ordained" ministers of the Universal Life Church, Inc., a California non-profit corporation, with headquarters in Modesto, California. Universal has no traditional doctrine. Its only dogma is that each person believe that which is right and that each person shall judge for himself what is right.[2]

Universal ministers are ordained "without question of their faith, for life for a free-will offering". To be ordained requires little more than an expression of a desire for ordination. An individual wishing to become a minister in Universal may secure his "Credentials of Ministry" from the office in California or he may be "ordained" by any Universal minister. The credential of his ministry is a pocket card. On the face of the card is shown his name and address and a statement that he is ordained by Universal. On the back of his pocket card is the name and address of Universal and a statement that the bearer is a legally ordained minister in the Universal Life Church, Inc.; that the certificate is granted for life and the holder is entitled to perform all ministerial services, such as baptisms, marriages, funerals and conducting church meetings; and that "[t]he holder is entitled to all privileges and considerations usually granted a minister". Universal's fact sheet, and the evidence of witnesses, disclosed the simplicity with which one becomes ordained. No ceremony, oath or form is required—just the card. There is no limit to the number

1. Six other individuals who are not appealing were included in the show cause order and their authority to celebrate the rites of matrimony was also rescinded.

2. Universal charters local churches "for a free-will offering of $1.00 per month". As a method of communicating "information to our people" the church publishes a newspaper available at $2.00 for one year. According to Universal's information sheet it sells a "beautiful new white and gold Universal Flag" for a "donation of $3.00 or more"; a record album entitled "HOLY SMOKE" and containing "an enlightening sermon by Rev. [Kirby J.] Hensley" for a "free-will offering of only $1.95"; a booklet on Rev. Hensley's life for a "donation", which also entitles one to Hensley's autographed "glossy picture"; a "Doctor of Religious Humanities Degree" for a "free-will offering of $40.00" upon completion of a course of instruction in "American Church Law and Parliamentary Procedure"; an honorary "Doctor of Divinity Degree" to any non-resident of California for a "free-will offering of $20.00" upon completion of a course of 10 lessons; and a "marriage certificate, printed in gold and black" for a "free-will offering of $3.00 each".

of individuals who could be ordained from the home office of Universal or ordained by its existing ministers. In fact, one could become an ordained Universal minister without his knowledge.

The relationship or communion between a Universal minister and his "congregation" can be characterized as informal, incidental and infrequent. Each of the appellants subscribes to Universal's newspaper, and there is apparently some communication between some of them and the headquarters in Modesto. The amount of time each minister spends with his individual "congregation" varies with the individual and ranges from no time spent some weeks to four to fifteen hours other weeks. The size of the congregation is minimal, sometimes as few as 3, 4 or 5. However, the literature of Universal specifies "[o]ne needs only a Pastor, a Secretary and a Treasurer to have a legal church". The meetings are apparently held when a minister and one or more of his congregation are assembled in their homes, a restaurant or elsewhere, and a discussion is had on any subject.

In the instant case the appellants appeared in the clerk's office of the court below, presented their "ordination card" to the clerk and were routinely processed. That is, they were advised that it was necessary in Virginia for a minister to execute a bond in the penal sum of $500 with surety. Upon the execution of this bond the court entered an order authorizing the applying minister to perform the ceremony of marriage. It was when a reporter from one of the local papers showed up in the clerk's office with a Universal ordination card and requested authorization to perform marriages that the clerk questioned the eligibility of Universal ministers for appointment to perform the ceremony of marriage. The show cause order was then entered against appellants and others.

Code § 20–23 provides, in pertinent part, as follows:

> "When a minister of any religious denomination shall produce before the circuit court . . . proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, such court . . . may make an order authorizing such minister to celebrate the rites of matrimony in this State. . . ."

The Commonwealth contends that the sole issue is whether Code § 20–23 should be construed to apply only to those ministers to whom the ministry is a full-time vocation. It maintains that the grant of authority contained in this section is intended to be limited to such ministers regardless of the method of their ordination. We reject this argument. It is a matter of common knowledge that there are many ministers in Virginia who serve their congregations with complete fidelity and efficiency while holding outside employment and deriving the major portion of their income from such employment.

We also disagree with the argument of appellants that Code § 20–23 requires the courts of Virginia to enforce a religious test as a prerequisite to appointing ministers to perform marriages in Virginia. This is not to deny the religious background of the section. It can be traced back through the successive Codes of Virginia to an Act of the General Assembly, October, 1784, which read, in part:

"It shall and may be lawful for any ordained minister of the gospel in regular communion with any society of Christians, and every such minister is hereby authorized to celebrate the rites of matrimony according to the forms and customs of the church to which he belongs. . . . ." Acts 1784, ch. 76. The Act of 1784 also provided for the appointment of ministers in very much the same manner as present-day Code § 20-23. Such appointment was not granted in 1784 to any minister who was an itinerant, or who was not settled within some parish, or with some Christian congregation within the Commonwealth. We do not review the history and politics behind the enactment of the Act of 1784, or the struggle for religious freedom which ultimately resulted in the enactment of the legislation which granted the right to perform marriages to ministers of all faiths.

The statute before us is an Act of the General Assembly of 1962 (Chapter 362) which amended and reenacted Code § 20-23. This case is not one concerning the guarantee of religious freedom as provided in the Constitution, but one of a proper construction of amended Code § 20-23 as an exercise by the General Assembly of its legislative power to delegate the authority to celebrate marriages and to provide licensing requirements for all persons who desire such authority. The interest of the state in the institution of marriage and in prescribing exclusive measures for the creation and dissolution of the marriage relationship was recognized in Boddie v. Connecticut, 401 U.S. 371, 376, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971), where it was said:

"It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval."

The interest of the state is not only in marriage as an institution, but in the contract between the parties who marry, and in the proper memorializing of the entry into, and execution of, such a contract. In the proper exercise of its legislative power it can require that the person who performs a marriage ceremony be certified or licensed.

Code § 20-23 is not designed to encourage church marriages or marriage by ministers. The state has no official interest in the place where a marriage occurs, or in the ceremony or ritual which surrounds the act. But it is a fact that the overwhelming majority of the people in this state prefer that their contract of marriage be solemnized, attested and officially reported by a representative of their own religion, faith or religious society. It is also a fact that a majority also prefer that the act of marriage itself occur within their own church or some other religious meeting place.

The state recognizes this preference but is confronted with the necessity that the marriage contract itself be memorialized in writing and by a person of responsibility and integrity and by one possessed of some educational qualifications. Ministers, as a profession, class or group, are persons of integrity and responsibility, and are persons qualified to perform a marriage in a proper manner, execute the necessary forms required by the state, and report the contract of marriage between

two people within the time prescribed. Therefore, the General Assembly, through the vehicle of Code § 20–23, makes eligible to perform the ceremony of marriage all ministers who can establish their "ordination" and "communion with the religious society of which they are a member". Neither the word "ordination" nor "communion" is used here in an ecclesiastical sense for the legislature was not concerned with the religious aspect of the marriage ceremony. In Webster's Third New International Dictionary (1966 ed.) the word "ordain" has many definitions, including "appoint", "arrange", "order", "manage" or "to establish by appointment", p. 587; and the word "communion" also has many definitions, including "mutual participation", "an interrelation in activity", "joint or common action" or "a function performed jointly", p. 460.

In treating ministers as a class the General Assembly obviously meant to qualify those individuals who, in accordance with the rules, regulations and discipline of their church, religious sect or organization, had been selected or elected as ministers. In some churches the minister is selected by its ecclesiastical head. The General Assembly assumes that the head of an eccesiastical order will be a responsible person and will, in turn, act responsibly in the selection of a minister. In other churches ministers are elected or selected by the congregation. Here again the General Assembly assumes that a congregation, the body corporate, will act responsibly and select a proper person as a minister. The same rationale applies when graduates of certain professional, trade or technical schools are licensed to practice their professions or trades without requiring them to be examined or tested by a State Board of Examiners.

The General Assembly was not concerned with preferring one sect over another in the enactment of Code § 20–33. The statute amounts to a blanket qualification of all ministers selected or elected by religious organizations and societies. But such a selection or election must be a considered, deliberate and responsible act. It must be an authoritative act. Ordination is the ultimate in the selection process. The fact that we cannot fit the Universal Life Church, Inc. within any definition of church, religious society or organization, found in any dictionary or in any decided case, is not important to this decision. We recognize the rights of appellants, and others of like inclination, to belong to Universal, to call it a church and to subscribe to its dogma of "believing that which is right as one defines it for himself". That the doctrines or beliefs which Universal employs vary from the orthodox and traditional is no concern of ours.[3]

It is apparent that we have here an organization of ministers—over one million in number says Universal—over one and one-half million says Jeffrey Eugene Kelso, one of appellants' witnesses and a Universal minister.[4] It appears that Universal encourages all who subscribe to its one tenet to become ministers. A church which consists of all ministers, and in

3. The question does suggest itself: Can an organization in which every member decides for himself what is right or wrong, using no yardstick except his own conscience, and without regard to the views, beliefs and convictions of other members, be in fact a religious congregation?

4. Assuming Kelso's estimate is correct, and the accuracy of Universal's statement that it has over 9,000 churches, this means a proportion of about 166 "ordained" ministers for every one church. Kelso testified he had personally "ordained" approximately 100 persons.

which all new converts can become instant ministers, in fact has no "minister" within the contemplation of Code § 20-23. The minister referred to there is the head of a religious congregation, society or order. He is set apart as the leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the order. By contrast, in Universal every living person is not only eligible for membership, but eligible for immediate ordination into the ministry, with all the benefits of that profession. We do not believe that the General Assembly ever intended to qualify, for licensing to marry, a minister whose title and status could be so casually and cavalierly acquired.

Appellants concede the vital interest of the state in the contract of marriage, for in their brief they say:

"[I]n times of handwritten official records and slow travel, it was important that marriages be performed by honest, literate, and fairly trustworthy people, as clerks of court did not then issue marriage licenses to the parties. . . .

"In short, there was then a real and indeed compelling state interest in controlling minister's celebrations of marriages at the time of the enactment of the bonding and licensing requirements for ministers. . . ."

Appellants then argue that this interest which existed in 1784 has disappeared, and that the state no longer has any interest in controlling who may perform the rite. They labor under a mistaken belief that there is no longer a legal duty on the part of ministers celebrating marriages to return the certificate of marriage to the clerk's office within five days. True, Code § 20-17, which imposed this duty on ministers, was repealed by an Act of the General Assembly in 1968 (Chapter 378). However, Code § 32-353.34 remains in effect. Subsection (c) of that section reads as follows:

"(c) Every person who officiates at a marriage ceremony shall certify to the facts of marriage and file the record in duplicate with the officer who issued the marriage license within five days after the ceremony. In the event said officiant dies, or becomes incapacitated before completing the certificate of marriage, the issuing clerk, upon proof to the court that a marriage was performed, may complete the certificate of marriage, when so ordered by the court."

Therefore the same paramount and compelling state interest which appellants admit existed in 1784 exists today. In fact the importance of the function to be performed by one who officiates at a marriage ceremony was recently recognized by the 1972 General Assembly when it amended Section (c) of Code § 32-353.34 by adding the second sentence. Acts 1972, ch. 92.

Appellants complain because the court below did not leave a Universal minister licensed and bonded to perform marriages pending their appeal. It is noted that there are other religious societies or organizations which do not have ministers who are appointed, selected or "ordained" within the meaning of Code § 20-23. Accordingly, Code § 20-26 deals with marriage between members of a religious society having no ordained minister as follows:

"Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society,

One person chosen by the society shall be responsible for completing the certification of marriage in the same manner as a minister or other person authorized to perform marriages; such person chosen by the society for this purpose shall be required to execute a bond under the provisions of § 20-23."

And Code § 20-25 authorizes certain courts of Virginia to appoint one or more persons, resident in the county or city in which such court is held, to celebrate the rites of marriage therein. Such appointment is made in the same manner as Code § 20-23 and the same bond is required of the appointee as that of an ordained minister.

While no case has been cited to us that bears directly on the point in issue here, there are numerous federal cases involving the ministry exemption of the Selective Service Act. In Dickinson v. United States, 346 U.S. 389, 394-395, 74 S.Ct. 152, 156, 98 L.Ed. 132 (1953), the Supreme Court had occasion to construe that Act and that part which provided that regularly and duly ordained ministers of religion shall be exempt from training and service. In construing this language the court said:

"The ministerial exemption, as was pointed out in the Senate Report accompanying the 1948 Act, 'is a narrow one, intended for the leaders of the various religious faiths and not for the members generally.' . . . Certainly all members of a religious organization or sect are not entitled to the exemption by reason of their membership, even though in their belief each is a minister. . . . Each registrant must satisfy the Act's rigid criteria for the exemption. . . . And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing a right to the exemption."

In United States v. Phifer, 440 F.2d 462 (7th Cir. 1971), the court affirmed a denial of a ministerial exemption to a member of the Watchtower Society although he was recognized by members of his faith as a "duly ordained minister".

These federal cases are distinguishable because they involved the clearly stated congressional intent to limit its grant of exemption to full time ministers. However, the cases do provide an analogy to the intent of the General Assembly in limiting its grant of authority to perform marriages to those who are in fact duly elected or appointed ministers. Those ministers qualifying for appointment under Code § 20-23, like the ministers exempt under the Selective Service Act, are members of a narrow class ". . . intended for the leaders of the various religious faiths and not for the members generally".

The action of the lower court rescinding the authority of appellants to celebrate the rites of matrimony in Virginia is supported by the evidence and is consistent with our construction of Code § 20-23. We have considered all assignments of error made by appellants and find no reversible error in this case.

The judgment of the lower court is

Affirmed.

FILED
JUL 3 1974
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1973

No. 73-1819

M. A. CRAMER, M. G. MURPHY,
LARRY C. MOYER, JOHN B. PURCELL,
WILLIAM J. RHOADES AND ROY B. SCHERER,
Petitioners,

v.

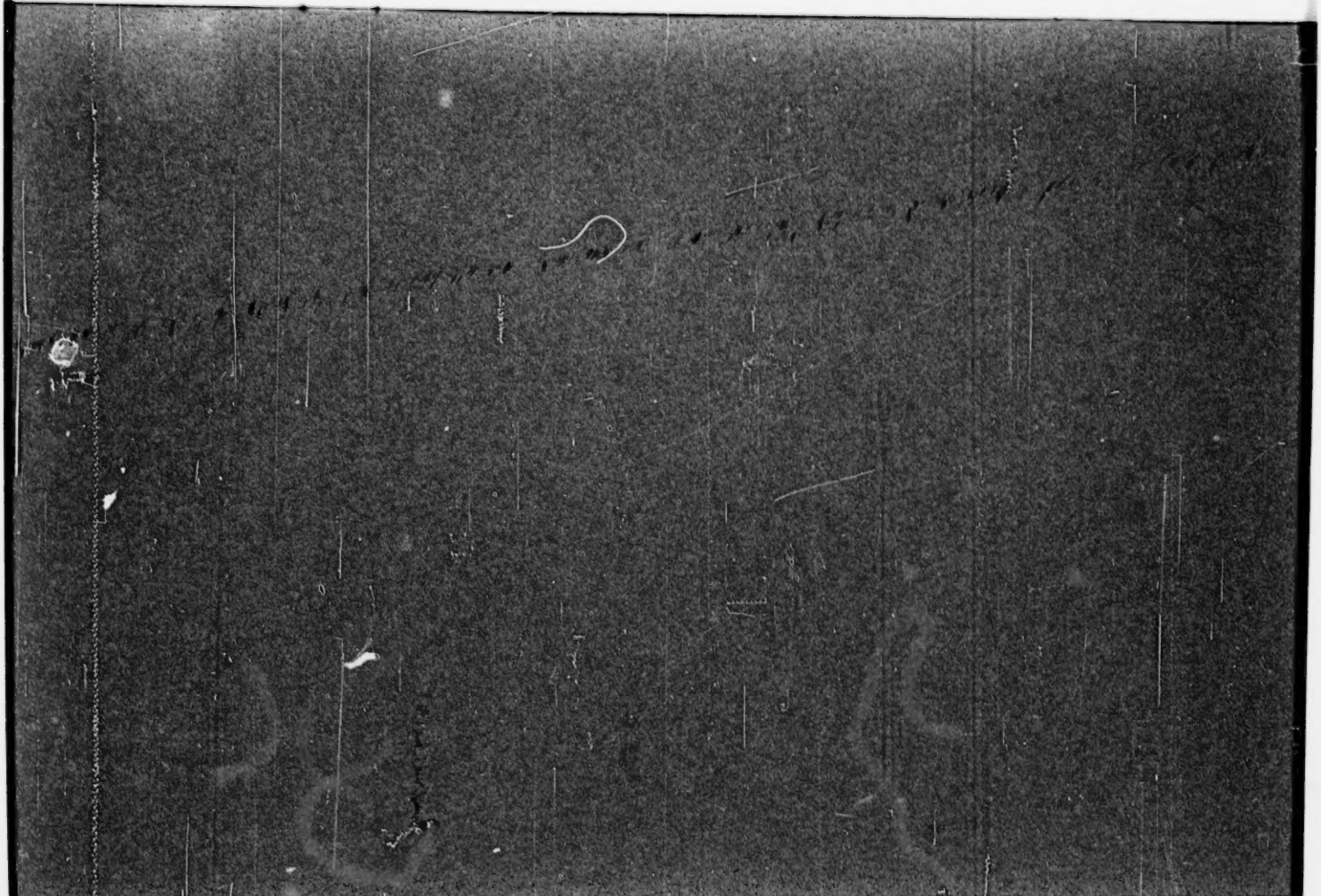
COMMONWEALTH OF VIRGINIA,
Respondent.

MOTION TO DISMISS

ANDREW P. MILLER
Attorney General of Virginia

STUART H. DUNN
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219



In The

Supreme Court of the United States

October Term, 1973

No. 73-1819

M. A. CRAMER, M. G. MURPHY, LARRY C. MOYER, JOHN B. PURCELL, WILLIAM J. RHOADES AND ROY B. SCHERER,
Petitioners,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

MOTION TO DISMISS

QUESTION PRESENTED

Whether the Commonwealth of Virginia has the right to decide those upon whom she shall confer the right to conduct ceremonies of marriage.

STATEMENT OF THE CASE

The statement of the case presented in Petitioners' brief is satisfactory with the exception of their discussion of the holding below. This will be addressed in argument.

ARGUMENT

The Supreme Court of Virginia placed this case in its proper perspective wherein it stated:

> "This case is not one concerning the guarantee of religious freedom as provided in the Constitution, but one of a proper construction of amended Code § 20-23 as an exercise by the General Assembly of its legislative power to delegate the authority to celebrate marriages and to provide licensing requirements for all persons who desire such authority." (App. 3a)

While Petitioners strain to construct a First Amendment argument, in fact this case involves nothing more than an interpretation of a state statute as to what persons are authorized to conduct marriage ceremonies.

The court below in interpreting § 20-23 of the Virginia Code found that Universal Life Church, Inc. had no minister within the meaning of that section. "A church which consists of all ministers, and in which all new converts can become instant ministers, in fact has no 'minister' within the contemplation of Code § 20-23." (App. 4a, 5a) It further found that the General Assembly never intended to qualify such a "minister" to celebrate marriages. Contrary to the argument of the Petitioners (Brief p. 11), the Universal Life Church is not "required" to do anything under the opinion below. It simply has no member who is authorized to marry others under Virginia law.

The interest of the State in the institution of marriage and in prescribing exclusive means for the creation and dissolution of the marital relationship has been recognized. *See, e.g., Boddie* v. *Connecticut*, 401 U.S. 371 (1971):

> ". . . It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval." 401 U.S. at 376.

The Court found that the state had an interest ". . . that the marriage contract itself be memorialized in writing and by a person of responsibility and integrity and by one possessed of some educational qualifications." (App. 3a) It went on to observe that "ministers" are normally qualified by education to perform marriages in a proper manner and are persons of integrity and responsibility. Obviously, no such generalization can be applicable where all persons are "ministers."

CONCLUSION

Petitioners argue that because they have been "ordained" as "ministers," the Commonwealth has no right to look behind this to determine if such persons are ministers within the meaning of the law. Such argument is akin to stating that if the Universal Life Church called an "apple" an "orange," Virginia would be bound by such designation. This is manifest nonsense. The General Assembly has determined those whom it will license to perform marriages. No federal question is created thereby.

The petition should be denied.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
By Counsel

ANDREW P. MILLER
Attorney General of Virginia

STUART H. DUNN
Assistant Attorney General

Supreme Court–Library Building
1101 East Broad Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I, Stuart H. Dunn, a member of the Bar of the Supreme Court of the United States and counsel for the above named respondent, hereby certify that I have served three copies of the foregoing Motion to Dismiss on Richard E. Crouch, Esq., American Civil Liberties Union of Virginia, 2304 Wilson Boulevard, No. 212, Arlington, Virginia 22201, and Melvin L. Wulf, American Civil Liberties Union, 22 East 40th Street, New York, N. Y., counsel for petitioners, this 3rd day of July, 1974. All parties required to be served have been served.

STUART H. DUNN
Assistant Attorney General